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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,899	02/05/2004	Steven Ginsberg	PC20008A	5352

7590 11/17/2004  
 Barry H. Jacobsen  
 Legal Division  
 Warner-Lambert Company LLC  
 201 Tabor Road  
 Morris Plains, NJ 07950

EXAMINER

BUI, LUAN KIM

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary****Application No.**

10/772,899

**Applicant(s)**

GINSBERG ET AL.

**Examiner**

Luan K Bui

**Art Unit**

3728

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --****Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/5 &amp; 4/14/04</u> . | 6) <input type="checkbox"/> Other: ____.  |

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 29 and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The phrases “the second tear-facilitating means” in claim 29 and “the boundary zone” in claim 31 lack proper antecedent basis.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 21-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hetrick et al. (6,199,698; hereinafter Hetrick'698) or Niwa (5,613,779) in view of Holmberg (6,293,403) and Batchelor (4,889,238). Hetrick'698 discloses a packaged supply of individual doses comprising a packet (120) having a pouch portion (121) that holds a single dose of the personal care product, a tab portion (122) releasably connected to the pouch portion and the pouch portion having a front edge remote from the tab portion. The front edge of the packet can be gripped to separate the pouch portion from the tab portion. Niwa discloses a packaged supply of individual doses comprising a packet (104) having at least one tear-facilitating means (1-3), a pouch portion (on one side of the tear-facilitating means, 5b) that holds a single dose of the personal care

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product, a tab portion (on an opposite side of the tear-facilitating means) releasably connected to the pouch portion and the pouch portion having a front edge remote from the tab portion (5b).

The front edge of the packet can be gripped to separate the pouch portion from the tab portion.

As to claim 22, Hetrick'698 or Niwa discloses all the limitations of the claim except for at least two packets/plurality being stacked on each other.

Holmberg shows a packaged supply of individual doses of a personal care product comprising a panel/tray (400) and a plurality of substantially identical packets (10-24) stacked on each other (Figure 6). Batchelor suggests a medicament package (20) comprising a container having a container body (23) for holding a plurality of packets (50, 51) stacked on each other within the container and a lid (22) for closing the container body. It would have been obvious to one having ordinary skill in the art in view of Holmberg and Batchelor to modify the packaged of either Hetrick'698 or Niwa so it comprises at least two packets stacked on each other for shipping and/or handling and also to provide more convenience for the user. It is so old and conventional for shipping from the manufacture to the retailers of the packet of either Hetrick'698 or Niwa, a plurality of the packets are uniformly stacked within a container to eliminate the cost.

As to claim 21, it would have been obvious to one having ordinary skill in the art in view of Batchelor to modify the packaged of either Hetrick'698 or Niwa so it includes a container for holding a stacked of the plurality of packets for better protecting the packets.

5. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over the references as applied to claim 33 above, and further in view of Velch (5,630,546). Hetrick'698 or Niwa

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further fails to show the container comprises a fixed cover and a movable cover. Velch teaches a container (6) comprising a tray (20); a fixed cover (28) that covers one end of the container and a movable cover (38) hingedly connected to the container. It would have been obvious to one having ordinary skill in the art in view of Velch to modify the packaged of Hetrick'698 or Niwa as modified so the cover comprises a fixed cover and a movable cover to prevent the packets from falling out of the container.

### ***Double Patenting***

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

7. Claims 21-34 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of U.S. Patent No. 6,708,826. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structural limitations in the claims of the instant patent application are fully disclosed by the patents.

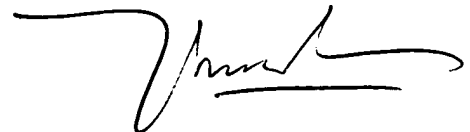
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***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (571) 272-4552. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to TC 3700 Customer Service at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 306-5648. Facsimile correspondence for this application should be sent to (703) 872-9306 for Formal papers and After Final communications.

lkb  
November 14, 2004

A handwritten signature in black ink, appearing to read 'Luan K. Bui', with a long horizontal flourish extending to the right.

Luan K. Bui  
Primary Examiner